

June 09, 2015

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: June 8, 2015

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
GEORGE QUINN CHEN,) No. 03-32157DM
Debtor.) Chapter 7
E. LYNN SCHOENMANN, as Trustee of) Adversary Proceeding
the Chapter 7 Estate of George) No. 07-3108DM
Quinn Chen, Debtor,)
Plaintiff,)
v.)
GEORGE QUINN CHEN, an individual,)
et al.,)
Defendants.)

MEMORANDUM DECISION ON MOTION TO VACATE ORDER
REVOKING DEBTOR'S DISCHARGE

I. INTRODUCTION

This adversary proceeding was commenced on September 24, 2007. Plaintiff, E. Lynn Schoenmann, the Chapter 7 Trustee ("Trustee"), sought in the second claim for relief money damages against debtor George Quinn Chen ("Debtor") and in the third claim for relief she sought to revoke Debtor's discharge.

Trial was held on June 1 and 2, 2009. The court issued a

1 Memorandum Decision following trial on November 10, 2009, and on
2 December 22, 2009, entered a judgment against Debtor (the
3 "Judgment"). On the second claim for relief Debtor was found
4 liable to Trustee in the sum of \$767,850.83. On the third claim
5 for relief, his discharge was revoked.

6 Debtor appealed the Judgment to the United States District
7 Court, which affirmed on September 20, 2010. He appealed to the
8 United States Court of Appeals for the Ninth Circuit, which
9 affirmed on December 13, 2011.

10 In the years that have followed since entry of the Judgment,
11 the Trustee has been unsuccessful in pursuing Debtor to collect
12 any amount, including initiation of proceedings to collect in
13 China that so far have produced no results.

14 On April 22, 2015, Trustee filed an Application For
15 Compromise of Controversy with Debtor. After a noticed hearing,
16 and with no objections, the court on May 23, 2015, entered its
17 Order Approving Trustee's Compromise of Controversy with Debtor.
18 Pursuant to the compromise, Debtor paid Trustee \$175,000 in full
19 satisfaction of his monetary liability under the Judgment.¹

20 In the negotiations leading to the compromise of the monetary
21 obligations under the Judgment, Debtor asked that as a condition
22 to that compromise that the court vacate the order revoking his
23 discharge. Trustee refused to condition the settlement on a
24 vacation of the discharge but agreed to file the present motion

25
26 ¹ In the current motion the Trustee has not calculated the
27 accrual of post-judgment interest to inform the court as the total
28 amount owing on the Judgment. For these purposes the court will
simply use the principal amount of \$767,850.83, which has now been
settled for a payment of \$175,000.

1 for an order vacating the revocation of Debtor's discharge.

2 It is that motion that the court now addresses. For the
3 reasons that follow, the motion to vacate the order revoking
4 Debtor's discharge will be denied.

5 II. DISCUSSION

6 The Bankruptcy Code is silent on when and if a denial or
7 revocation of a discharge may be vacated. Trustee has premised
8 her motion on Fed. R. Bankr. P. 9024, which incorporates Fed. R.
9 Civ. P. 60. More specifically, the likely provisions of Fed. R.
10 Civ. P. 60 to support the motion would be subparagraphs (b)(5) and
11 (b)(6). Those two subparagraphs provide that the court may
12 relieve a party from a final judgment, order or proceeding for
13 various reasons, including:

14 (5) The judgment has been satisfied, released or
15 discharged; it is based on an earlier judgment that has been
16 reversed or vacated; or applying it prospectively is no
longer equitable; or

17 (6) Any other reason justifying relief.

18 While it is true that the court's approval of the compromise
19 means that Debtor's liability under the Judgment has been
20 released, the court does not believe that is an appropriate source
21 of authority to vacate the prior revocation of Debtor's discharge.
22 The portion of the Judgment that has been released or discharged
23 is the monetary liability. Other than paying the \$175,000, Debtor
24 has done nothing relevant to the revocation of his discharge.

25 The other alternatives under subparagraph (b)(5) are not on
26 point. There is no earlier judgment that has been reversed or
27 vacated, and applying the revocation of Debtor's discharge
28 prospectively remains equitable because it is precisely what the

1 Bankruptcy Code contemplates when a Debtor loses the benefit of a
2 discharge in bankruptcy. The principal purpose of the Bankruptcy
3 Code is to grant a fresh start to the honest but unfortunate
4 debtor. Grogan v. Garner, 498 U.S. 279, 286, 287 (1981).
5 Conversely a debtor who has violated provisions of section 727 of
6 the Bankruptcy Code must suffer the consequence of a denial or
7 revocation of his discharge. Debtor's conduct has taken him
8 outside of the protected class of debtors entitled to the fresh
9 start.

10 Subparagraph (b)(6) of Fed. R. Civ. P. 60, namely "any other
11 reason justifying relief" is also of no help.

12 To begin with the motion here was made by the Trustee and not
13 the Debtor. The Trustee relies on evidence that the court accepts
14 as accurate from the Trustee's point of view, namely that
15 creditors have not pursued Debtor since the revocation of his
16 discharge, and he does not presently have any ability to satisfy
17 the unpaid portion of the Judgment or other nondischarged claims
18 of creditors as well. But what is lacking is a statement under
19 oath from the Debtor himself to the same effect. While it is true
20 that the pre-existing creditors whose claims originated pre-
21 petition, at least twelve years ago, perhaps have no basis or
22 inclination to pursue Debtor, there is no competent evidence that
23 that is so. Further, there is no evidence that Debtor himself may
24 not have the ability to satisfy any pre-petition claims of
25 creditors in the future.

26 The only authority the Trustee offers to support her motion
27 is an unreported decision from the bankruptcy court in Kansas, In
28 re Oxley, 2007 WL 2590166 (Bankr. Kan. 2007). That case is quite

1 distinguishable in that it involves less than four thousand
2 dollars that were in debtors' bank accounts that they did not turn
3 over to the trustee. The trustee sued to recover that amount from
4 the debtors and to revoke their discharge. The debtors suffered a
5 default and then, just two months later, moved to set aside the
6 default in the trustee's adversary proceeding. By the time of
7 that motion they had accumulated the full amount of money the
8 trustee sought and the court was satisfied that because the
9 debtors had fulfilled their monetary obligation, perhaps
10 subparagraph (b)(5) of Fed. R. Civ. P. 60 was satisfied. In the
11 alternative the court felt that subparagraph (b)(6) was
12 appropriate authority to grant the requested relief.

13 Oxley is not sufficient support to grant the extraordinary
14 relief the Trustee requests. Years have passed and hundreds of
15 thousands of dollars of the Judgment will never be recovered. No
16 other authority has been cited by the Trustee or located by the
17 court.

18 The court is persuaded that the reasoning in Kleven v.
19 Mrozinski (In re Mrozinski), 489 B.R. 818 (Bankr. N.D. Ind. 2013)
20 should apply here. The court there dealt with a motion by a
21 debtor to set aside a default wherein that debtor's discharge had
22 been revoked. Much like this case, the court rejected the notion
23 that Fed. R. Civ. P. 60(b)(5) was available because a money
24 judgment had been satisfied. Rather, it pointed out that the
25 satisfaction of the monetary obligation did not deal with the
26 issue of whether a judgment revoking a discharge can ever be
27 satisfied. The court cited In re Jacobs, 2008 WL 4369273 *3
28 (Bankr. D. Kan. 2008) for the proposition that a judgment revoking

1 a debtor's discharge can never be satisfied.

2 Turning to the policy behind the obligations of debtors to
3 return property to the estate and cooperate with the trustee in
4 order to have the benefits of the discharge, the court stated:

5 Fulfilling those obligations should not be like pulling teeth
6 and a trustee should not be required to hound the debtor into
7 doing so. Yet, to grant the debtor's motion would encourage
8 just that sort of reluctant behavior. It would encourage
9 debtors to, in effect, play chicken when it comes to
10 responding to the trustee's demands and to adopt a pattern of
11 obdurate behavior which would test the trustee's seriousness
12 in making them. To grant the debtor's motion because he has
13 now done something he should have done months ago would
14 encourage others to ignore the trustee's letters or informal
15 requests, motions seeking turnover, the orders granting them,
16 and adversary proceedings based upon those orders without
17 much danger of jeopardy. After things had been pushed to the
18 limit and the discharge denied or revoked, a debtor would
19 need to do little more than come forward with belated
20 compliance in hopes that what had been denied would be
21 restored. Such a ruling would undermine the deterrent effect
22 of § 727 is supposed to have and do nothing to improve the
23 efficiency of the administration of bankruptcy estates.

24 489 B.R. at 823.

25 The court uses the same reasoning here to reject the
26 Trustee's request on the Debtor's behalf under subparagraph
27 (b)(6). That rule requires a showing of "exceptional
28 circumstances". See, Helm v. Resolution Trust Co., 84 F.3d 74 (7th
Cir. 1996). Neither the Trustee nor the Debtor has shown the
court any exceptional circumstances that suggest that the Debtor
can delay recovery on a substantial judgment for several years and
then claim empty pockets to restore a discharge properly revoked
in 2009.

29 For the foregoing reasons, the Motion To Vacate Order
30 Revoking Debtor's Discharge is DENIED. The court is issuing an

1 order to that effect concurrently with this Memorandum Decision.

2 **END OF MEMORANDUM DECISION**

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